

IN SUPREME COURT

STATE OF NORTH DAKOTA

Roland Riemers & Charles Tuttle	)	Supreme Court # _____
Petitioners	)	<b>PETITION for EMERGENCY</b>
vs.	)	<b>SUPERVISORY WRIT</b>
Burleigh County District Court	)	
Respondent	)	Ref: 8-2020-CV-1884

**I. EMERGENCY SUPERVISORY WRIT REQUESTED**

Roland Riemers and Charles Tuttle (here-in-after Petitioners), are the Contestants in the Election Contest of 8-2020-CV-1884 which seeks to contest the 9 June 2020 Primary Election. Petitioners hereby petition the ND Supreme Court for an EMERGENCY SUPERVISORY WRIT directing the Burleigh County District Court that:

- a. The Contestees are in Default for not responding with a “verified” Response.
- b. The Contestees are in Default for not submitting a timely response.
- c. The District Court has Subject Matter Jurisdiction.
- d. That the Court Dismissing the Election Suit after the date for a mandated hearing was ex-post-facto, a denial of state and federal procedural due process and thus is invalid.
- e. Direct that the District Court have an immediate hearing on the election suit.

**II. VERIFIED RESPONSE WAS REQUIRED:**

Under NDCC 16.1-16-03 the Contestants must serve a “*verified complaint*” on the Contestees. If you look at most dictionaries or the laws in other states, they generally always state a verified complaint requires a verified answer. But 16.1-16 is silent on this issue. And under our Rules of Interpretation, the “*The code establishes the law of this state respecting the subjects to which it relates, and its provisions and all proceedings under it are to be construed liberally, with a view to effecting its objects and to promoting justice.*” (NDCC 1-

02-01) Would not justice require that if the Contestant had to submit a verified Complaint, that the Contestees must also submit a verified Response? *“Words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears, but any words explained in this code are to be understood as thus explained.”* (NDCC 1-02-02) *“Technical words and phrases and such others as have acquired a peculiar and appropriate meaning in law, or as are defined by statute, must be construed according to such peculiar and appropriate meaning or definition.”* (NDCC 1-02-03). Again, this would enforce the idea that for justice a verified Complaint requires a verified Response. It is also presumed that *“A just and reasonable result is intended.”*. *“Public interest is favored over any private interest.”* (NDCC 1-02-38.5) We also need to look at *“The object sought to be attained.”* (NDCC 1-02-39.1) As well as the *“The consequences of a particular construction.”*(NDCC 1-02-39.5). In this instance, the law is trying to get a speedy resolution of the election process. Allowing the Respondents’ lawyers to ramble on with the usual generic cryptic legal denials defeats the whole purpose of the statute. The election statutes want speedy results. The Respondents want generic denials followed by months of meaningless discovery and redundant motions so that no real contest of any election can ever be done.

Decisive is, *“Whenever the meaning of a word or phrase is defined in any statute, such definition is applicable to the same word or phrase wherever it occurs in the same or subsequent statutes, except when a contrary intention plainly appears.”* (NDCC

1-01-09) In this instance, the rule for a verified pleadings is clearly spelled out in other statutes: *“The answer and reply must be verified . . .”* (NDCC 32-30-07)

The Contestees did not submit a verified Response and are therefore in Default.

### **III. CONTESTEES DID NOT SUBMIT A TIMELY RESPONSE:**

It is clear from their actions that the Respondents are attempting to follow the Rules of Civil Procedure. But this action is for the most part governed by State Statute NDCC 16.1. When a statute gives clear mandates, the statute must be followed. (NDCC 1-02-01) There is no provision in 16.1 for the normal 3 days allowed for mail service. NDCC 16.1-16-04 requires “*The contestee shall serve and file an answer within fourteen days after service of the contest summons and complaint*”. In common English “served” means to give possession to. (Refer to NDCC 1-01-02 & 03) The Respondents does not get the 3 days for mail service as allowed under the Rules for Civil Procedure. They were required to have physically gotten their Response into the Petitioners hands before the end of the 14<sup>th</sup> day. Nor would any other interpretation make sense as there is only 10 days allowed after the response until the hearing. (See NDCC 16.1-16-06 and 1-02-39.1). Subtracting 3 more days off that 10 days would have allowed only 7 days maximum for the Contestants to respond before the mandated hearing. Nor did Respondents need to respond by mail. The Respondents could have personally served the Petitioners the same day they filed the return, or they could have gotten permission from the Petitioners to serve them by email or fax? Or they could have mailed out their Response 3 days before? So it really was not an impossible burden on the Respondents.

Because the Respondents did not follow the statute to physically serve the Petitioners by the 14<sup>th</sup> day (ie. the 6<sup>th</sup> of July), their Response has to be stricken from the record.

### **IV. THE COURT HAD SUBJECT MATTER JURISDICTION**

On 20<sup>th</sup> of July the District Court Dismissed the Election Complaint “*For Lack of*

*Subject Matter Jurisdiction.*” The Respondents and the Court contend that an election contest can only be made against the individual winning candidate and in the County of that candidate. So in the case of Riemers, the Respondents and court contend Riemers should have sued Zachar Raknerud (here-in-after just Zach). But Zach did not set up the mail-in election. Zach did not violate state and federal election laws. Zach did not direct the Governor’s Office, the Secretary of State’s Office, nor the League of Counties or any of the various local election officers. State officials did the crime, not Zach. The State has all the answers, not Zach. So why in the world would Riemers name Zach as a Contestee? Why should Zach have to hire an expensive lawyer to defend the Contestees’ illegal election practices? Why would Riemers want to file the case in Zach’s Ward County? Absolutely none. The Governor and the Secretary of State violated the laws and caused the election problems, and the correct county for suing them is Burleigh County, not Ward County. And if Zach had been sued by the Contestants it would leave the State completely off the hook and would be a complete denial of Contestants’ Right to a Remedy under ND Constitution Article 1, Section 9 and Section 5. *“The citizens have a right . . . to apply to those invested with the powers of government for the redress of grievances, or for other proper purposes, by petition, address or remonstrance.”*

In any case Tuttle had two winning opponents. One lives in Morton County and one lives in Burleigh County. So which one of those three counties was the correct county?

In any case, Zach was actually a Contestee because in our initial complaints it was made *“ . . . against all candidates appearing on the Primary Ballot.”* (Line 13, Page 1 of Complaint.) The reason for that is that if the election was unfair and illegal for Riemers and

Tuttle, it was unfair and illegal for all the candidates on that ballot.

*The object sought to be attained.*” (NDCC 1-02-39.1) from our election laws is an honest and open election, which certainly would not have been achieved by Petitioners making an election contest against Zach for a statewide poorly run election. As well as the *“The consequences of a particular construction.”*(NDCC 1-02-39.5) by dismissing a law suit because we can not decide which candidate should be sued for the Contestee’s actions?

This Court needs to direct the District Court that they do have jurisdiction.

**V. THE DISTRICT COURT ERRED IN DISMISSING AFTER THE DATE REQUIRED FOR A MANDATORY HEARING.**

Because of the high importance of keeping our elections honest and on time, State law NDCC 16.1-16 sets time limits much stricter than the rules of Civil or Court Procedure. After the Contestee Responds, the law mandates *“The district court shall set the hearing on the contest action not more than ten days after the filing of the contest answer.”* (NDCC 16.1-16-06) The Contestees responded on 6 July 2020. The final date for this mandated hearing was the 16<sup>th</sup> of July 2020. No hearing was set by the Burleigh County District Court, so on the 16<sup>th</sup> of July Riemers filed a Petition for Supervisory Writ with this Court. On the 20<sup>th</sup> of July, after missing the mandated hearing and after the Petition for a Supervisory Writ, the District Court issued a Ex-Post-Facto order which basically just parroted the Respondents pleadings and dismissed the election law complaint.

It is obvious that this delayed ruling is a denial of Petitioner’s Due Process Rights under the State and Federal Constitution and the order was made mostly as a way to excuse the court for not having a mandated hearing and this order should be stricken by this Court.

**VI. ENOUGH DELAYS, THE COURT MUST ISSUE AN EMERGENCY SUPERVISORY WRIT CALLING FOR AN IMMEDIATE HEARING ON THE ELECTION CHALLENGE.**

The November election is fast approaching. State election laws require an open and honest election process run by the rule of law. Thus the need for a speedy resolution of this election challenge. Currently August 25<sup>th</sup> is a hearing on just the Respondents' motion for a Decision on the Pleadings, for just the legality of the Governor's various emergency orders. These orders directly and indirectly caused the problems in the Primary election. So, if eventually the courts rule the Governor's orders were illegal (which they were), would not that also make the actions of the state to those orders illegal, such as our elections? Is this Court just going to continue to kick the can down the road? We therefore ask this Court to direct that the District Court set up an immediate hearing so that the issues raised can be resolved in August of 2020 and not some remote legal action in 2021?

By, \_\_\_\_\_  
Roland Riemers, Petitioner

The above Petitioner I have personally identified and has subscribed and sworn before me this \_\_\_ day of August 2020, under penalty of perjury, that the statements in this Petition are true and correct to the best of his knowledge and belief.

\_\_\_\_\_  
Notary Public, State of North Dakota

By,  \_\_\_\_\_  
Charles Tuttle, Petitioner

The above Petitioner I have personally identified and has subscribed and sworn before me this \_\_\_ day of August 2020, under penalty of perjury, that the statements in this Petition are true and correct to the best of his knowledge and belief.

\_\_\_\_\_  
Notary Public, State of North Dakota

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STATE OF NORTH DAKOTA

Roland Riemers )  
Petitioner )  
vs. )  
Burleigh County District Court )  
Respondent )

Supreme Court # \_\_\_\_\_

**AFFIDAVIT OF  
PERSONAL SERVICE**

Ref: 8-2020-COVID-1884

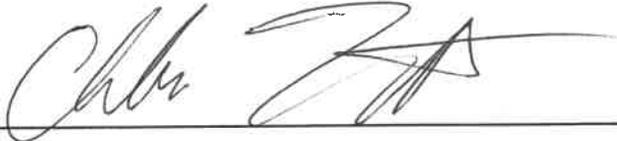
I, Charles Tuttle, being sworn, state that

I am a citizen of the United States over the age of twenty-one and I am not a party to the above-entitled matter. That at the hour of 4:30 on this 3 day of August 2020, this Affiant served upon Respondent Attorney General <sup>Governor's Office</sup> <sub>Sec of State</sub>

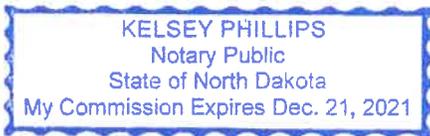
\_\_\_\_\_, Bismarck, North Dakota by handing to Attorney General, a true and correct copy of the following documents filed in the above captioned action:

**Petition for Emergency Supervisory Writ**

To the best of this Affiant's knowledge, information and belief, such address as given above is the actual address of the party intended to be served. The above documents were duly personally served in accordance with provisions of the North Dakota Rules of Civil Procedure.

Affiant's signature: 

The above Person I have personally identified, and has subscribed and sworn to before me this 3<sup>rd</sup> day of August 2020.



  
Notary Public, State of North Dakota  
State of North Dakota, Burleigh County